
IN THE UNITED STATES DISTRICT COURT FOR THE DISTRICT OF UTAH
CENTRAL DIVISION

ANTHONY DELLIS SPENCER,

Petitioner,

vs.

UNITED STATES OF AMERICA,

Respondent.

**MEMORANDUM DECISION
AND ORDER**

Case No. 2:07CV955DAK

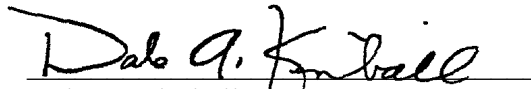
This matter is before the court on Petitioner Anthony Dellis Spencer's Motion for Certificate of Appealability. Pursuant to Rule 22(b)(1) of the Federal Rules of Appellate Procedure, if a petitioner in a Section 2255 proceeding files a notice of appeal, "the district judge who rendered the judgment must either issue a certificate of appealability or state why a certificate should not issue." Fed. R. App. 22(b)(1). Pursuant to Rule 22(b), if the district court grants the certificate it must be sent to the appellate court with Petitioner's notice of appeal. *Id.* Whereas, if the district court denies the certificate, Petitioner may request a circuit judge to issue the certificate. *Id.*

Under 28 U.S.C. § 2253, a certificate of appealability "may issue . . . only if the applicant has made a substantial showing of the denial of a constitutional right." 28 U.S.C. § 2253(c)(2). This court denied Petitioner's Section 2255 motion. For the reasons set forth in the court's order

denying Petitioner's Section 2255 motion, the court concludes that Petitioner has not made a substantial showing of the denial of a constitutional right. Accordingly, Petitioner's Request for Certificate of Appealability is DENIED.

DATED this 18th day of March, 2009.

BY THE COURT:


Dale A. Kimball
United States District Judge